



## UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/589,770	04/30/2007	Nan-Yao Su	UF-412XC1	2272
23557 7590 09/23/2010 SALIWANCHIK LLOYD & SALIWANCHIK A PROFESSIONAL ASSOCIATION PO Box 142950 GAINESVILLE, FL 32614				
EXAMINER				
LEVY, NEIL S				
ART UNIT		PAPER NUMBER		
1615				
NOTIFICATION DATE		DELIVERY MODE		
09/23/2010		ELECTRONIC		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

euspto@slspatents.com

### Office Action Summary

**Application No.**

10/589,770

**Applicant(s)**

SU ET AL.

**Examiner**

NEIL LEVY

**Art Unit**

1615

**Period for Reply** -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 09 August 2010.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-3,6 and 10-22 is/are pending in the application.
- 4a) Of the above claim(s) 2,3,6 and 13-22 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,10,11,12 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☒ Claim(s) 1-3,6 and 10-22 are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB-08)  
Paper No(s)/Mail Date 8/9/2010
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ ~~Notice of Informal Patent Application~~
- 6) ☐ Other: \_\_\_\_\_

### **DETAILED ACTION**

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

ClaimS 2, 3, 6 and 13-22 stand withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention and species, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 3/11/10.

### ***Claim Rejections - 35 USC § 102***

Claims 1,10 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by MA et al CN1399876.

Ten percent tebufenazole with 10% diflubenzaron are combined as a powder or dust or granules (page 4, bottom-5 of translation). A bait is shown as the last embodiment on page 5.

### ***Claim Rejections - 35 USC § 103***

Claims 1,10- 12 stand rejected under 35 U.S.C. 103(a) as being unpatentable over KARR et al in view of POPPEN et al and SU.

KARR provides the essence of the instant invention, but not every compound.

POPPEN (above) provides the instant compounds, but not as termite bait.

SU provides termite baits (col 6, lines 9, 10) in hermetically sealed bait, in durable housings (col 6, lines 15-31; 42+).

Both POPPEN and KARR control wood damaging insects with Juvenile Hormones, methoprene, hydropene & pyriproxyfen & with ecdyson agonists of instant claim 1 (POPPE)\_ and chitin synthesis inhibitors (KARR).

Given the termiticides known, shown by all three references, and KARR's teaching of the combination as superior, one would be motivated to utilize the newer toxicants of POPPEN and apply them as taught by SU, with expectation of synergistic results.

It would have been obvious to a person of ordinary skill in the art at the time the invention was made desiring to utilize termite control means, to use any of art recognized means, as of the KARR baits, modified as desired to increase stability, dispersibility, compatibility of ingredients, processing ease, reduced toxicity to handlers with further expectation of success by inclusion of all 3 types of wood damaging insect pests & as one advantageous delivery form for termite control, the SU forms of hermetically sealed bait, in durable housings.

All the critical elements of the instant are disclosed. The amounts and proportions of each ingredient are result effective parameters chosen to obtain the desired effects. It would be obvious to vary the form of each ingredient to optimize the effect desired, depending upon the particular species and application method of interest, reduction of toxicity, cost minimization, enhanced, and prolonged, or synergistic effects. Applicant has not provided any objective evidence of criticality, nonobvious or unexpected results that the administration of the particular ingredients' or

concentrations provides any greater or different level of prior art expectation as claimed, and the use of ingredient for the functionality for which they are known to be used is not basis for patentability.

Claims 1,10,11 are rejected under 35 U.S.C. 103(a) as being unpatentable over MA et al in view of SU et al '95.

MA (above) provides baits of tebufenozide with hexaflumeron or diflubenzaron, but not specifically in housings. SU does-hexaflumeron with cellulose (wood) baits in housing are shown.

It would have been obvious to a person of ordinary skill in the art at the time the invention was made desiring to utilize termite control means, to use the MA compositions, in an advantageous delivery form for termite control, the SU forms of hermetically sealed bait, in durable housings.

The bait of MA would be obvious to use in a housing, when termites are the pest of concern.

Claims 1,10-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over MA in view of SU et al WO 03/082002.

MA (above) provides the instant dust and baits of ecdysone agonists, tebufenozide with chitin synthesis inhibitors, hexaflumeron, diflubenzuron, but not in housings. Hermatecally sealed wood bait, with toxicants, hexaflumeron, are taught by SU (page 11) to be inserted in housings (figures) in order to control termites.

It would have been obvious to a person of ordinary skill in the art at the time the invention was made desiring to utilize termite control means, to use the MA compositions, in an advantageous delivery form for termite control, the SU forms of hermetically sealed bait, in durable housings.

The bait of MA would be obvious to use in a housing, when termites are the pest of concern.

One would use the combination of toxicants taught by SU as obvious to test with expectation of superior results with the combination following testing as is well known in the art, and obvious to perform, given the 2007 supreme court decision in KSR V TELEFLEX @ 82 USPQ 2d @ 1385

Applicant's arguments of 6/18/2010 with respect to claims 1,10,11 & 12 have been considered but are moot in view of the new ground(s) of rejection.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to NEIL LEVY whose telephone number is 571-272-0619. The examiner can normally be reached on Tuesday-Friday, 7 AM to 5:30 PM EST..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, ROBERT A. WAX can be reached on 571-272-0623. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/NEIL LEVY/  
ART UNIT 1615

9/12/2010